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OCT 13 2006

OFFICE OF PETITIONS

In re Application of :
Stephan Dolio :
Application No. 09/765,802 : DECISION ON APPLICATION
Filed: January 19, 2001 : FOR
Attorney Docket No. 9623/314 : PATENT TERM ADJUSTMENT
:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(b)," filed December 27, 2005. Applicant requests that 900 days be awarded for Patent Term Adjustment, rather than the 883 days indicated in the PAIR system.

The application for patent term adjustment is **GRANTED to the extent indicated herein.**

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is seven hundred eighty-two (**782**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On October 4, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 883 days. Applicants dispute the reduction of 17 days associated with the filing of a request for continued examination (RCE) on June 9, 2005. Applicants assert that in response to the Notice of Allowance mailed February 23,

2005, applicants paid the Issue Fee on May 11, 2005, which should have stopped the clock.

Applicants' arguments have been considered and found somewhat persuasive. With the payment of the Issue Fee on May 11, 2005, applicants filed a complete response to the Notice of Allowance mailed February 23, 2005. This was within the three-month period set forth in § 1.704(b). Thus, a 17-day reduction pursuant to § 1.704(b) is not warranted.

However, a reduction pursuant to § 1.704(c)(10) is warranted. 37 CFR 1.704(c) provides, in pertinent part, that:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(10) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or

(ii) Four months;

The record confirms that the withdrawal from issue, RCE and Information Disclosure Statement (IDS) were filed after the mailing of a notice of allowance. A review of the IDS confirms that it did not include a § 1.704(d) statement. The RCE and IDS were responded to with the mailing of a second Notice of Allowance on October 4, 2005. By definition, this is a failure to engage in reasonable efforts to conclude prosecution within the meaning of 1.704(c)(10). Thus, a period of reduction of 118 days, for the period beginning on June 9, 2005 and ending on October 4, 2005 is warranted.


It is noted that 2 other papers were filed after the mailing of the notice of allowance. On July 11, 2005, applicants filed a request for corrected filing receipt. Accompanying this paper was a showing that the paper was a copy of the request as previously filed (but not acted on) on May 10, 2001, prior to the mailing of the notice of allowance. On August 8, 2005, applicants filed another IDS. This IDS did include a § 1.704(d) statement. As such, no reduction under 1.704(c)(10) is warranted for the filing of these 2 papers.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance mailed October 4, 2005 is seven hundred eighty-two (782) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Day : Thursday
Date: 10/5/2006

PALM INTRANET

Time: 12:47:38

PTA Calculations for Application: 09/765802

Application Filing Date:	01/19/2001	PTO Delay (PTO):	903
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	20
Post-Issue Petitions:	0	Total PTA (days):	782
PTO Delay Adjustment:	-101		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
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57	10/04/2005	MAIL NOTICE OF ALLOWANCE			
55	09/09/2005	CORRESPONDENCE ADDRESS CHANGE			
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45	07/11/2005	MISCELLANEOUS INCOMING LETTER			
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39	06/09/2005	WORKFLOW - REQUEST FOR RCE - FINISH			
38	06/09/2005	WORKFLOW - REQUEST FOR RCE - FINISH			
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36	06/09/2005	PETITION ENTERED			
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34	06/03/2005	CORRESPONDENCE ADDRESS CHANGE			
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32	05/27/2005	RECEIPT INTO PUBS			
31	05/20/2005	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
30	05/19/2005	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
29	05/16/2005	ISSUE FEE PAYMENT RECEIVED			
28	03/23/2005	WORKFLOW - FILE SENT TO CONTRACTOR			
27	03/02/2005	EXPORT TO INITIAL DATA CAPTURE			
26	02/23/2005	MAIL NOTICE OF ALLOWANCE			
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24	02/22/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
23	02/22/2005	NOTICE OF ALLOWABILITY			
22	02/14/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
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17	12/10/2004	WORKFLOW INCOMING AMENDMENT IFW			
16	10/13/2004	CASE DOCKETED TO EXAMINER IN GAU			
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12	08/02/2004	TRANSFER INQUIRY TO GAU			
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10	09/03/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	01/29/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	05/14/2001	PRELIMINARY AMENDMENT			
7	05/14/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	05/19/2001	CASE DOCKETED TO EXAMINER IN GAU			
5	03/14/2001	APPLICATION DISPATCHED FROM OIPE			
4	03/13/2001	CORRESPONDENCE ADDRESS CHANGE			
3	03/13/2001	CORRESPONDENCE ADDRESS CHANGE			
2	02/06/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			

1	01/19/2001	INITIAL EXAM TEAM NN			
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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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